

ESTTA Tracking number: **ESTTA516210**

Filing date: **01/15/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	iControl Networks, Inc.
Granted to Date of previous extension	01/16/2013
Address	555 Twin Dolphin Drive, Suite 280 Redwood City, CA 94065 UNITED STATES
Attorney information	John L. Slafsky Wilson Sonsini Goodrich & Rosati 650 Page Mill Road Palo Alto, CA 94304-1050 UNITED STATES trademarks@wsgr.com, jslafsky@wsgr.com, mkuykendall@wsgr.com

Applicant Information

Application No	85604476	Publication date	09/18/2012
Opposition Filing Date	01/15/2013	Opposition Period Ends	01/16/2013
Applicant	Vaulted Brands, Inc 707 Rose Road Lake Zurich, IL 60047 UNITED STATES		


Goods/Services Affected by Opposition

Class 009. First Use: 2011/04/22 First Use In Commerce: 2011/08/01 All goods and services in the class are opposed, namely: Telecommunications hardware and software for remotely monitoring and controlling battery-operated and electric household sump pumps and sewage pumps via the Internet
Class 042. All goods and services in the class are opposed, namely: Internet based monitoring and control services relating to battery-operated and electric household sump pumps and sewage pumps

Grounds for Opposition


Priority and likelihood of confusion	Trademark Act section 2(d)
Other	The Application has been transferred to an entity that is not a successor to the business to which the applied-for mark relates.


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3235408	Application Date	03/04/2004
Registration Date	04/24/2007	Foreign Priority Date	NONE
Word Mark	ICONTROL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2006/05/00 First Use In Commerce: 2006/05/00 Computer hardware, communications hardware and computer software, all for use in single-family residences, multiple-unit residences and small businesses for management, automation and monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all of the foregoing excluding software and hardware to manage and secure communications traffic over computer networks</p> <p>Class 042. First use: First Use: 2006/05/00 First Use In Commerce: 2006/05/00 Application service provider (ASP) featuring software in the fields of automation and monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all for use in single-family residences and multiple-unit residences and small businesses; providing services by means of communications networks allowing automation and customer monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all for use in single-family and multiple-unit residences and small businesses, all of the foregoing excluding software and hardware support services to manage and secure communications traffic over computer networks</p>		

U.S. Registration No.	3674449	Application Date	03/04/2004
Registration Date	08/25/2009	Foreign Priority Date	NONE
Word Mark	ICONTROL		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2008/10/00 First Use In Commerce: 2008/10/00 Computer software for electronic sensor monitoring of physical activity, remote automation, and security, namely, computer software for management and automation of physical premises security data, physical premises management data, and inventory data, all stored in personal computers, PDAs or consumer electronic devices, all of the foregoing excluding software and hardware to manage and secure communications traffic over computer networks


U.S. Registration No.	2407438	Application Date	11/25/1998
Registration Date	11/21/2000	Foreign Priority Date	NONE
Word Mark	ICONTROL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2000/03/02 First Use In Commerce: 2000/03/02 REMOTE CONTROLS THAT OPERATE AND AUTOMATE HOME ENTERTAINMENT AND HOME ELECTRONICS		

U.S. Registration No.	3904154	Application Date	05/28/2010
Registration Date	01/11/2011	Foreign Priority Date	NONE
Word Mark	ICONTROL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2006/05/00 First Use In Commerce: 2006/05/00 downloadable software for use with management, monitoring, and automation of energy consumption for single-family residences, multiple-unit residences, and small businesses; computer hardware, communications hardware, and		

	<p>computer software, all for use in single-family residences, multiple-unit residences, and small businesses for management, monitoring, and automation of energy consumption, all of the foregoing excluding software and hardware to manage and secure communications traffic over computer networks</p> <p>Class 042. First use: First Use: 2006/05/00 First Use In Commerce: 2006/05/00 application service provider (ASP) featuring software for use with management, monitoring, and automation of energy consumption for single-family residences, multiple-unit residences, and small businesses, all of the foregoing excluding software to manage and secure communications traffic over computer networks</p>
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U.S. Registration No.	3256165	Application Date	08/16/2006
Registration Date	06/26/2007	Foreign Priority Date	NONE
Word Mark	ICONTROL NETWORKS		
Design Mark	 <p>The logo features the word "iControl" in a large, bold, serif font. Above the "i" is a stylized wireless signal icon consisting of three concentric arcs. Below "iControl" is the word "NETWORKS" in a smaller, all-caps, sans-serif font, flanked by horizontal lines on either side.</p>		
Description of Mark	NONE		
Goods/Services	<p>Class 042. First use: First Use: 2006/05/00 First Use In Commerce: 2006/05/00 Application service provider (ASP) featuring software in the fields of automation and monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all for use in single-family residences and multiple-unit residences and small businesses; providing technical services by means of communications networks allowing automation and customer monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all for use in single-family and multiple-unit residences and small businesses, all of the foregoing excluding software and hardware support services to manage and secure communications traffic over computer networks</p> <p>Class 045. First use: First Use: 2006/05/00 First Use In Commerce: 2006/05/00 Providing security services by means of communications networks allowing automation and customer monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all for use in single-family and multiple-unit residences and small businesses, all of the foregoing excluding software and hardware support services to manage and secure communications traffic over computer networks</p>		

U.S. Registration No.	3242514	Application Date	08/16/2006
Registration Date	05/15/2007	Foreign Priority Date	NONE
Word Mark	ICONTROL NETWORKS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2006/05/00 First Use In Commerce: 2006/05/00 computer hardware, communications hardware and computer software, all for use in single-family residences, multiple-unit residences and small businesses for management, automation and monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all of the foregoing excluding software and hardware to manage and secure communications traffic over computer networks

U.S. Registration No.	3636924	Application Date	07/19/2006
Registration Date	06/09/2009	Foreign Priority Date	NONE
Word Mark	ICONTROL NETWORKS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2008/10/00 First Use In Commerce: 2008/10/00 computer software for electronic sensor monitoring of physical activity, remote automation, and security, namely, computer software for management and automation of physical premises security data, physical premises management data, and inventory data, all stored in personal computers, PDAs or consumer electronic devices, all of the foregoing excluding software and hardware to manage and secure communications traffic over computer networks		

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/John L. Slafsky/
Name	John L. Slafsky
Date	01/15/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____)	
)	
)	
ICONCONTROL NETWORKS, INC.,)	Opposition No.:
)	
Opposer,)	
)	
v.)	
)	<u>NOTICE OF OPPOSITION</u>
ZOELLER PUMP COMPANY, LLC,)	
)	
Applicant.)	
_____)	


Re: Mark: ICONCONTROL
Serial No.: 85/604,476
Filed: April 13, 2012
Published: September 18, 2012

Opposer iControl Networks, Inc. ("Opposer"), a corporation organized and existing under the laws of Delaware, located at 555 Twin Dolphin Drive, Suite 280, Redwood City, California, 94065, believes that it will be damaged by the registration of the mark shown in application Serial No. 85/604,476 (the "Application"), and hereby opposes the Application.

As grounds for the opposition, Opposer alleges that:


1. Opposer timely files this Notice of Opposition.
2. Opposer develops and distributes hardware and software to leading broadband, telecommunications and home security providers to deliver broadband home monitoring and management services to their customers concerning, among other things, remote monitoring of physical activity, physical premises security systems and remote management of household devices. Opposer's hardware and software can, for example, detect water leakage via sensors in the homes of end-users.





3. Opposer has used the marks ICONTROL and  (collectively, the “ICONTROL Mark”) in connection with goods and services since at least as early as May 2006. Such use has been valid and continuous, and the marks have not been abandoned.

4. Opposer owns the following U.S. trademark registrations for the ICONTROL Mark:

Mark	Reg. No.	Goods & Services
ICONTROL	3235408	<p>International Class 009: computer hardware, communications hardware and computer software, all for use in single-family residences, multiple-unit residences and small businesses for management, automation and monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all of the foregoing excluding software and hardware to manage and secure communications traffic over computer networks;</p> <p>International Class 042: application service provider (ASP) featuring software in the fields of automation and monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all for use in single-family residences and multiple-unit residences and small businesses; providing services by means of communications networks allowing automation and customer monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all for use in single-family and multiple-unit residences and small businesses, all of the foregoing excluding software and hardware support services to manage and secure communications traffic over computer networks;</p>
ICONTROL	3674449	<p>International Class 009: computer software for electronic sensor monitoring of physical activity, remote automation, and security, namely, computer software for management and automation of physical premises security data, physical premises management data, and inventory data, all stored in personal computers, PDAs or consumer electronic devices, all of the foregoing excluding software and hardware to manage and secure communications traffic over computer networks;</p>

Mark	Reg. No.	Goods & Services
ICONTROL	2407438	International Class 009: remote controls that operate and automate home entertainment and home electronics;
ICONTROL	3904154	<p>International Class 009: downloadable software for use with management, monitoring, and automation of energy consumption for single-family residences, multiple-unit residences, and small businesses; computer hardware, communications hardware, and computer software, all for use in single-family residences, multiple-unit residences, and small businesses for management, monitoring, and automation of energy consumption, all of the foregoing excluding software and hardware to manage and secure communications traffic over computer networks;</p> <p>International Class 042: application service provider (ASP) featuring software for use with management, monitoring, and automation of energy consumption for single-family residences, multiple-unit residences, and small businesses, all of the foregoing excluding software to manage and secure communications traffic over computer networks;</p>
	3256165	<p>International Class 042: application service provider (ASP) featuring software in the fields of automation and monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all for use in single-family residences and multiple-unit residences and small businesses; providing technical services by means of communications networks allowing automation and customer monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all for use in single-family and multiple-unit residences and small businesses, all of the foregoing excluding software and hardware support services to manage and secure communications traffic over computer networks;</p> <p>International Class 045: providing security services by means of communications networks allowing automation and customer monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all for use in single-family and multiple-unit residences and small businesses, all of the foregoing excluding software and hardware support services to manage and secure communications traffic over computer networks;</p>

Mark	Reg. No.	Goods & Services
	3242514	International Class 009: computer hardware, communications hardware and computer software, all for use in single-family residences, multiple-unit residences and small businesses for management, automation and monitoring of electronic sensors of physical activity, physical premises security systems, home entertainment devices and home electronic devices, all of the foregoing excluding software and hardware to manage and secure communications traffic over computer networks; and
	3636924	International Class 009: computer software for electronic sensor monitoring of physical activity, remote automation, and security, namely, computer software for management and automation of physical premises security data, physical premises management data, and inventory data, all stored in personal computers, PDAs or consumer electronic devices, all of the foregoing excluding software and hardware to manage and secure communications traffic over computer networks.



In its registrations for mark  Opposer has disclaimed rights in the term “networks” apart from the marks as shown.

5. Opposer has offered its goods and services under the ICONTROL Mark throughout the United States and has developed valuable goodwill with respect to the ICONTROL Mark.

6. By virtue of the efforts and the expenditure of considerable sums for promotional and advertising activities and by virtue of the excellence of its goods and services, Opposer has gained for the ICONTROL Mark a valuable reputation and has created in the minds of the public strong association between, on one hand, the ICONTROL Mark and, on the other hand, Opposer’s goods and services.

7. On information and belief, Applicant Zoeller Pump Company, LLC (“Applicant”) is a Kentucky limited liability company, with an address of 3649 Cane Run Road, Louisville, Kentucky 40202. Applicant claims to be the successor in interest to the company that filed the Application initially.

8. On information and belief, on April 20, 2012, Basement Flood Protector, an Illinois corporation, (“Original Applicant”) filed the Application in the United States Patent and Trademark Office (“U.S.P.T.O.”) based on a claim of actual use for International Class 009 and with an intent-to-use basis for International Class 045.

9. On information and belief, on April 25, 2012, Original Applicant filed an amendment with the U.S.P.T.O. changing the name of the applicant to Vaulted Brands, Inc. (“Amended Applicant”).

10. On information and belief, on July 25, 2012, Amended Applicant purportedly assigned the Application to Applicant.


11. On information and belief, the Application was published in the Official Gazette on September 18, 2012, with the following identification of goods and services:

“telecommunications hardware and software for remotely monitoring and controlling battery-operated and electric household sump pumps and sewage pumps via the Internet” in International Class 009 and “Internet based monitoring and control services relating to battery-operated and electric household sump pumps and sewage pumps” in International Class 042.

12. On information and belief, Original Applicant, Amended Applicant and Applicant did not use the applied-for mark in connection with “telecommunications hardware and software for remotely monitoring and controlling battery-operated and electric household sump pumps and sewage pumps via the Internet” in the United States prior to April 22, 2011.

13. On information and belief, Original Applicant, Amended Applicant and Applicant did not use the applied-for mark in connection with “Internet based monitoring and control services relating to battery-operated and electric household sump pumps and sewage pumps” in the United States prior to April 20, 2012.

14. Opposer has not authorized any use or application for registration of the applied-for mark by Original Applicant, Amended Applicant or Applicant. Original Applicant, Amended Applicant and Applicant are not affiliated or connected with Opposer and have not been endorsed or sponsored by Opposer, nor has Opposer approved any of the goods or services offered or sold or rendered or intended to be sold or rendered by Original Applicant, Amended Applicant or Applicant under the applied-for mark.

15. Applicant’s applied-for mark is identical to Opposer’s mark **icontrol** and so closely similar to Opposer’s mark  such that Applicant’s use and registration are likely to cause consumer confusion, mistake and/or deception as to the source or origin of Applicant’s goods and services, and will injure and damage Opposer and the goodwill symbolized by the ICONTROL Mark.

16. The respective goods and services of Opposer and Applicant are related such that, as a result of Applicant’s registration of its mark, the public is likely to be confused, to be deceived or to assume erroneously that Applicant’s goods and services are those offered by Opposer, or that Applicant is in some way connected with, sponsored by or affiliated with Opposer, all to the detriment of Opposer.

17. Upon information and belief, the Application has been transferred to an entity that is not a successor to the business to which the ICONTROL mark relates.

WHEREFORE, Opposer prays that application Serial Nos. 85/604,476 be rejected, that

no registration be issued to Applicant and that this opposition be sustained in favor of Opposer.

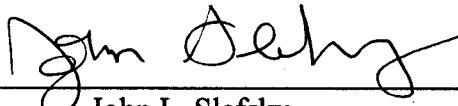
Please address all U.S.P.T.O. communications regarding this Notice of Opposition to:

John L. Slafsky
Matthew J. Kuykendall
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304-1050
Tel: (650) 493-9300
Fax: (650) 493-6811
trademarks@wsgr.com

Date: January 15, 2013

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI
A Professional Corporation

By: 
John L. Slafsky
Matthew J. Kuykendall

Attorneys for Opposer
iControl Networks, Inc.

CERTIFICATE OF SERVICE BY U.S. MAIL

I, Lisa M. Ruiz, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

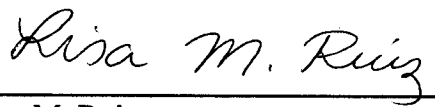
On this date, I served the **NOTICE OF OPPOSITION** on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Scott R. Cox
Lynch, Cox, Gilman & Goodman, P.S.C.
500 West Jefferson Street, Suite 2100
Louisville, Kentucky 40202

David A. Gottardo
P.O. Box 44657
Racine, Wisconsin 53404-7014

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Palo Alto, California on January 15, 2012.



Lisa M. Ruiz